STATE OF MICHIGAN

COURT OF APPEALS

DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee of ARGENT SECURITIES, INC.,

Plaintiff/Counter Defendant-Appellant,

v

ESTATE OF PAUL HAYES,

Defendant-Appellee,

and

ROSEMARY ECHOLS,

Defendant/Counter Plaintiff-Appellee,

and

ESTATE OF ESTELLA THURMOND, CARE ALTERNATIVES, INC., Conservator of DORIS HARRELL, a Legally Incapacitated Person, TERRY D. CATCHINGS, REGINALD ALEXANDER, WILLIAM WHITE, and TEMERIA HALE,

Defendants.

UNPUBLISHED
April 26, 2007

No. 273726
Wayne Circuit Court
LC No. 05-523122-CH

Before: Cavanagh, P.J., and Jansen and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order *sua sponte* entering summary

disposition in favor of the Estate of Estella Thurmond[1] in plaintiff's action to quiet title to mortgaged property. We affirm in part, reverse in part, and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff is the assignee of a $69,350 purchase-money mortgage loan obtained by William White on property located in Detroit. When White defaulted, plaintiff instituted this action seeking to quiet title to the subject property in favor of White and to be granted an equitable mortgage. Plaintiff additionally brought claims of breach of contract against White and breach of warranty and fraud against Reginald Alexander, who had conveyed the property to White.

The chain of title with respect to the property is burdened by several gaps and incongruous conveyances that were apparently undiscovered by plaintiff or its predecessor in interest until after White defaulted. In 1962, the subject property was conveyed by warranty deed to Estella Thurmond and Paul Hayes as tenants in common. The next recorded transaction is a quitclaim deed from Thurmond to defendant Rosemary Echols, dated September 25, 2002, and recorded October 30, 2002. It is through this deed that Echols claims title. Plaintiff, on the other hand, contends the deed was fraudulently recorded because Thurmond died intestate in October 1986. Plaintiff notes that Thurmond's tenancy in common interest in the property would have passed by intestate succession to Hayes, her son and sole heir at law, at the time of Thurmond's death. Hayes, in turn, died testate in 1997; his will included a specific bequest of the subject real property to Doris Harrell.[2]

Next appearing in the records is a quitclaim deed from Harrell to Terry Catchings, dated March 17, 2003, and recorded on March 21, 2003.[3] A quitclaim deed from Catchings to Echols, dated June 2, 2003, was recorded on October 30, 2003. A January 13, 2004, quitclaim deed from Echols to Alexander was recorded on June 15, 2004. On February 13, 2004, Alexander conveyed the property to White by warranty deed, recorded May 17, 2004. Also dated February 13, 2004, is the mortgage instrument by which White obtained a purchase-money mortgage on the property. Finally, by quitclaim deed dated October 19, 2004, and recorded October 25, 2004, White conveyed the property to Echols and Temeria Hale.

Plaintiff obtained default judgments against Care Alternatives, Inc. (as conservator for Harrell), Catchings, Alexander, and Hale. White did not appear in the action, but plaintiff did not obtain a default judgment against him because, to foreclose the mortgage, plaintiff wished to quiet title in him. Plaintiff obtained consent judgments as against the Estate of Paul Hayes and the Estate of Estella Thurmond. The judgments state that "any and all interests of the Estate[s] in the [subject property] … is hereby terminated and forever extinguished." The only named

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[1] The Estate of Estella Thurmond is one of several defendants below that are not parties to this appeal. Rosemary Echols is the sole appellee.

[2] Care Alternatives, Inc., as conservator for the incapacitated Harrell, was named as a defendant below. There is apparently no deed of record conveying the property to Harrell.

[3] In a prior quiet-title action instituted by Catchings against Echols and others, the circuit court dismissed Catchings' case, ruling that his deed was invalid because Harrell's conservator lacked authority to transfer the property without approval from the probate court.

defendant who appeared in the action to claim title to the subject property is Echols, who counterclaimed against plaintiff for a declaratory judgment quieting title in herself.

Plaintiff moved for summary disposition as against Echols. Plaintiff, noting that its claim against Echols was one sounding purely in equity, sought to quiet title in its favor as against her. Plaintiff argued that the 2002 deed under which Echols claimed title was legally deficient, in that it was not notarized or delivered and that it was fraudulently recorded after Thurmond's death in 1986.

Following a hearing, the trial court declined to quiet title in plaintiff or White, as requested by plaintiff. Rather, the trial court issued a written order adjudging that Echols' 2002 deed was invalid; that any person claiming by or through that deed, including Echols, Alexander, White, Hale, and plaintiff, possessed no present interest in the property; and that the property remained vested in the Estate of Estella Thurmond.

This Court reviews de novo the grant or denial of a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004); *Tipton v William Beaumont Hosp*, 266 Mich App 27, 32; 697 NW2d 552 (2005). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Lind v Battle Creek*, 470 Mich 230, 238; 681 NW2d 334 (2004). "When a motion under [MCR 2.116(C)(10)] is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4). The trial court may grant summary disposition under MCR 2.116(C)(10) if, considering the substantively admissible evidence in a light most favorable to the nonmoving party, there is no genuine issue concerning any material fact and the moving party is entitled to judgment as a matter of law. *Lind*, *supra* at 238; *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999); see also MCR 2.116(G)(6).

Equitable actions, including actions to quiet title, are also reviewed de novo. *Burkhardt v Bailey*, 260 Mich App 636, 646-647; 680 NW2d 453 (2004). The trial court's findings of fact are reviewed for clear error. MCR 2.613(C); *Burkhardt*, *supra* at 647. However, the court may not resolve factual disputes or determine credibility in ruling on a summary disposition motion. *Id*., citing *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

We hold that the trial court erred in *sua sponte* quieting title in favor of the Estate of Estella Thurmond in light of the consent judgment reached between that party and plaintiff.

MCR 2.507(H) provides:

> An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

"In general, judgments, including consent judgments, entered by our courts are final and binding," and can be set aside only on a proper ground for relief pursuant to MCR 2.612(C)(1),

such as fraud or mistake. *Staple*, *supra* at 564; see also *Walker v Walker*, 155 Mich App 405, 406-407; 399 NW2d 541 (1986):

> When a party approves an order or consents to a judgment by stipulation, the resultant judgment or order is binding upon the parties and the court. . . . Absent fraud, mistake or unconscionable advantage, a consent judgment cannot be set aside or modified without the consent of the parties . . . nor is it subject to appeal. [Citations omitted.]

A settlement agreement made in open court is enforceable as a contract and is governed by the legal principles applicable to the construction and interpretation of contracts. *Michigan Mutual Ins Co v Indiana Ins Co*, 247 Mich App 480, 484; 637 NW2d 232 (2001).

The trial court erred in disregarding the consent judgment executed by plaintiff and the Estate of Estella Thurmond, which clearly and unequivocally provides that "any and all interests of the Estate in the [subject property] … is hereby terminated and forever extinguished." There has been no claim that the consent judgment should be set aside or that it is unenforceable for any reason. Indeed, at no time has the Estate of Estella Thurmond expressed any interest whatsoever in the subject property.[4] The consent judgment, being final and binding on the parties and the trial court, runs directly contrary to the trial court's vesting of title in the Estate.

The record is not sufficiently developed to allow this Court to resolve plaintiff's claims that title should be quieted in White and that plaintiff is entitled to an equitable mortgage on the subject property; nor has plaintiff on appeal set forth any support, factual or legal, for such claims. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Accordingly, this matter must be remanded to the trial court for further proceedings.

The trial court's order is reversed to the extent that it granted summary disposition in favor of the Estate of Estella Thurmond and declared that plaintiff and White have no present interest in the subject property. The order is otherwise affirmed. We remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Stephen L. Borrello

[4] Nor would any such interest be expected, since Thurmond's tenancy in common interest in the property presumably passed by intestate succession to her son, Hayes, at the time of her death in 1986.